

Continued Council Meeting—March 20, 2014

The continued meeting of the Council of the Town of Altavista was held in the Council Chambers of the J.R. Burgess Municipal Building, 510 Seventh Street on March 20, 2014 at 5:00 p.m.

1. Mayor Mattox called the meeting to order and presided.

Council members

present:

Mayor Michael Mattox
Mrs. Beverley Dalton
Mr. Charles Edwards
Mr. Tracy Emerson
Mr. Bill Ferguson
Mr. Timothy George
Mr. Jay Higginbotham

Also present:

Mr. J. Waverly Coggsdale, III, Town Manager
Chief Ken Walsh, Police Department
Mr. John Eller, Town Attorney
Mrs. Mary Hall, Administration

2. Mayor Mattox advised the reason for the continued meeting is to receive public comment on the public nuisance at 327 Myrtle Lane, Ms. Annette Hite.
Pursuant to the Altavista Town Code Section 34-32 (b), the owner of any activity or conditions that may be declared a public nuisance has an opportunity for a hearing before Town Council. He advised tonight's hearing is based on the issuance of three separate complaints received by the Altavista Police Department, as set forth in Section 34-33(b) of the Town Code, regarding barking animals located at 327 Myrtle lane. The third complaint stated to the occupant of 327 Myrtle Lane that the animal(s) at that location appeared to constitute a public nuisance and was subject to the abatement procedures under Sections 34-32 through 34-35 of the Town Code. As mentioned earlier, prior to declaring the activity/condition in question a public nuisance, the owner/occupant is afforded a hearing before Town Council. Mayor Mattox advised following tonight's hearing Town Council has the option of declaring the activity/condition as a public nuisance or not. If the Council declares it a public nuisance the owner/occupant shall be given a reasonable time to abate the public nuisance.

Ms. Annette Hite, 327 Myrtle Lane, addressed Council. She asked that she have the information on who was making the complaints. She stated she did not know all the Town ordinances; what could be done and what couldn't. She felt she was a good law abiding citizen. She stated she knew you could not have unlicensed vehicles in your yard and that you had to be quiet, and that an officer had to come to your home to physically tell you of these things. She stated her dogs have not barked, they have not been a problem for a year. She felt it was odd that it was time for her lease to be up, and perhaps the neighbors felt she would leave and she hasn't. Now the barking dog matter has surfaced again. She felt she had a right to know who was making the complaints and to physically see paperwork; she noted if it continued she would be filing a harassment suit. She stated if her dogs are barking she wanted proof. Ms. Hite stated on Friday, March 14 she was served with papers after the fact that it had been in the *Altavista Journal*. She noted a friend of hers advised it was in the newspaper. She stated an officer came to her property six or seven times that day and she would not answer the door because they continually walked around the house knocking on the door and the apartment door. Ms. Hite stated the dogs never made a sound. She noted her neighbor, Ben, came to the door while she was out of town, and advised a family member that the dogs were barking. Ms. Hite stated the problem was the bark collars needed batteries which she replaced. She stated the dogs are not going to continue to bark to get shocked. She welcomed Council to come on her property at any time, day or night, to see if the dogs are barking. She did not feel it was fair to do something without proving it other than word of mouth. She again

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stated it was very odd that the dogs start barking a year later. She asked Mayor Mattox if his family that lives on Myrtle Lane has complained and stated she would like to know exactly who the complaints are coming from.

Mr. Ben Cunningham, 329 Myrtle Lane, addressed Council. Mr. Cunningham advised he lives beside of Ms. Hite. He owns a dog and felt everybody should have the privilege. He stated the fact that he owns loves dogs and treats them like family; he does not want to see anybody lose a dog. He said he had no other motive other than the barking goes on for six, seven hours at a time. Mr. Cunningham advised he works very odd hours and has to be in bed very early and when a dog barks up to 9 or 10 at night it is very frustrating (especially when he owns a dog that does not bother the neighbors). He again stated it was not a personal thing it is the inconvenience factor and that it has been addressed multiple times.

Mr. Higginbotham asked Mr. Cunningham if he had any suggestions on how to solve this.

Mr. Cunningham stated dogs bark when they need something. When they are outside for long periods of time or they are hungry, if they want attention (he noted he was not saying these are the circumstances), they are going to bark. He acknowledged for a long time he did not hear the dogs barking and felt it was because of the bark collars. Over the past couple of months, there has been a re-emerging problem. He stated he couldn't give any recommendations, his dogs are indoor dogs and Ms. Hite's dogs are outdoor dogs.

Mr. George asked Mr. Cunningham if he had smelt any foul odor.

Mr. Cunningham stated recently with the weather getting nicer and being on his back porch he felt it was the dogs being in a lot and when it rains the odor is strong; he could definitely smell feces.

Mrs. Micki Brumfield, 318 Myrtle Lane, addressed Council. She stated she was in the same position as Mr. Cunningham, she has dogs and they are in the house. She does not want to see anyone lose their dogs. She stated she didn't know what the situation was; it worked for a while but has not worked for the last several months. She noted the dogs were outside last night barking. Her husband works third shift and sleeps during the day; a fan and television has to be on to drown out the barking dogs. Mrs. Brumfield stated they are at Council's mercy to know what to do. There have been no consequences for this yet. She felt no one understood the seriousness of this matter. She stated they could not listen to something constantly barking for hours. The dogs are outside; they are bored and barking for hours. Mrs. Brumfield stated she understands the landlord does not allow the dogs in the house and she was at the same point as her neighbors; they are tired of the noise.

Mr. Ferguson questioned Mrs. Brumfield's house being across the street and back from the street.

Mrs. Brumfield responded her house was caddy-cornered and the dogs are on the side; the noise comes right across the street.

Mayor Mattox asked if anyone else would like to comment. No one came forward. He asked Chief Walsh to come forward and give his perspective.

Chief Walsh addressed Council in reference to the nuisance complaint. He stated he was notified by the Mitchells, 325 Myrtle Lane, in early January of their complaint of barking dogs. He stated on January 7th, he delivered to Ms. Hite a copy of the Town's Public Nuisance Code and explained to her in detail what the complaints were. He stated another complaint was received on January 10th. Lieutenant J.T. Younger and Officer Haugh were sent to 327 Myrtle as a follow-up to the initial visit with Ms. Hite. Chief Walsh stated on January 14th, he made another visit to notify her that this was still a complaint and to ask if she had some solution to this problem. Chief Walsh stated Ms. Hite advised him that she would be keeping the dogs in doors

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except to feed and use the bathroom. Chief Walsh stated he went back on March 14th at 6:30 p.m. to deliver Ms. Hite the notice. He stated between the dates of January 14th and March 14th, the neighbors notified him on three separate occasions of the continuous barking of the dogs and the nuisance it was creating to them and their quality of life. This was documented through letters from residents on Myrtle Lane. According to statements from the neighbors it is an ongoing, continuous, habitual, nuisance, and they can't have any peace or quality of life as long as there is continuous barking from the dogs. He noted he offered to Ms. Hite, if there was any way he could personally help, he would do whatever is necessary. Chief Walsh said his opinion is the neighborhood needs relief from the problem.

Mayor Mattox moved to the consideration of the public nuisance by Town Council and advised of the potential actions.

Mr. George recused himself because of a personal friendship with one of the neighbors.

Mr. Ferguson felt Council had a declaration of public nuisance in front of them. This occurred a year ago and now it's back. He was ready to declare it a public nuisance.

Mr. Higginbotham stated Council has to find a way to stop this and felt it should be declared a public nuisance and a timeframe established to correct the problem.

Mrs. Dalton concurred.

Mr. Edwards stated he would like to know the mechanics of the process.

Mr. John Eller, Town Attorney, advised once Council makes a declaration of public nuisance it is up to Council to decide what action will be taken to abate it and to set a reasonable period of time for it to be done in. Mr. Eller noted the Code states failure to comply with the abatement order within the prescribed time allows the Town to confiscate the dogs and dispose of them according to law.

Mr. Emerson stated he concurred with Council that something had to be done.

Mrs. Dalton stated they all loved dogs and this issue came up a year ago. Council withheld declaring a public nuisance but it is back again. She felt Council would have to be more aggressive this time and felt the dogs should be removed from the property.

A motion was made by Mr. Edwards, seconded by Mr. Emerson, to declare the barking dogs at the home of Ms. Annette Hite, 327 Myrtle Lane, a public nuisance and to give her 72 hours to remove the dogs.

Mr. Higginbotham questioned if it was one dog or multiple dogs.

Mrs. Dalton stated it was two dogs and noted the Chief has offered to help with the removal of the dogs.

Ms. Hite asked to comment. She said last week she called about dogs barking twice and she wanted it to be proven that it was her dogs barking.

Mr. Higginbotham asked Ms. Hite how long she would need to remove the dogs.

Mr. Edwards replied this has been going on for a year already.

Mr. Higginbotham responded there is now a directive from Council.

Mr. Edwards felt the neighbors did not need to be subjected to another three weeks.

Mr. Higginbotham stated the residents said they don't hold anything against the dogs and would rather not see the dogs go to the pound.

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Mr. Cunningham stated he did not want to see anything bad happen to the dogs noting they are not bad dogs.

Ms. Hite asked for additional time stating she just started a new job and cannot take time off.

Mr. Higginbotham suggested giving Ms Hite three weeks to find a home for the dogs.

Mr. Ferguson suggested giving Ms. Hite 10 days to abate the nuisance.

Mr. Emerson said he has a dog and it aggravates him inside the house; with that being said he felt like it would not matter if it was 3 days or 10 days and would stay with the 3 days to abate the problem.

A motion was made by Mrs. Dalton, seconded by Mr. Ferguson, to amend Mr. Edwards’ motion and allow 10 days for abatement of the public nuisance at 327 Myrtle Lane.

Motion carried.

VOTE:	Mr. Tracy Emerson	No
	Mr. Charles Edwards	No
	Mrs. Beverley Dalton	Yes
	Mayor Mike Mattox	Yes
	Mr. Jay Higginbotham	Yes
	Mr. Bill Ferguson	Yes
	Mr. Tim George	Abstained

The amended motion is that Council declares the two barking dogs at the residence of Ms. Annette Hite, 327 Myrtle Lane, to be a public nuisance and to direct Ms. Hite to abate the said nuisance by removal of the dogs from the premises no later than 10 days from the date of the passage of the motion.

Motion carried.

VOTE:	Mr. Tracy Emerson	No
	Mr. Charles Edwards	No
	Mrs. Beverley Dalton	Yes
	Mayor Mike Mattox	Yes
	Mr. Jay Higginbotham	Yes
	Mr. Bill Ferguson	Yes
	Mr. Tim George	Abstained

Ms. Hite asked to comment and stated when she calls about dogs barking in the neighborhood she does not receive a call back.

3. Closed Session

I move that the Altavista Town Council convene in closed session in accordance with the provisions set out in the *Code of Virginia*, 1950, as amended,

Section 2.2-3711 (A)(5) regarding discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business’ or industry’s interest in locating or expanding its facilities in the community.

A motion was made by Mrs. Dalton, and seconded by Mr. George

Motion carried.

VOTE:	Mr. Tracy Emerson	Yes
	Mr. Charles Edwards	Yes
	Mrs. Beverley Dalton	Yes
	Mayor Mike Mattox	Yes

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Mr. Jay Higginbotham	Yes
Mr. Bill Ferguson	Yes
Mr. Timothy George	Yes

Council went into closed session at 5:30P.M.
Notice was given that council was back in regular session 7:05 P.M.

FOLLOWING CLOSED SESSION:

A motion was made by Mrs. Dalton, seconded by Mr. Edwards, to adopt the certification of a closed meeting.

CERTIFICATION OF CLOSED MEETING

WHEREAS, the town council has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the town council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the town council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the town council.

Motion carried.

VOTE:	Mr. Tracy Emerson	Yes
	Mr. Charles Edwards	Yes
	Mrs. Beverley Dalton	Yes
	Mayor Mike Mattox	Yes
	Mr. Jay Higginbotham	Yes
	Mr. Bill Ferguson	Yes
	Mr. Timothy George	Yes

4. Adjournment

Mayor Mattox reminded Council of the Budget Work Session scheduled for Thursday, March 24, 2014 at 6:00 p.m.

Mayor Mattox asked if there was anything else to bring before Council.

The meeting was adjourned at 7:06 P.M.

Michael E. Mattox, Mayor

J. Waverly Coggsdale, III, Clerk